

IN THE CROWN COURT AT NOTTINGHAM

Combined Court Centre
60 Canal Street
Nottingham

Thursday, 6th January 2011

Before

HIS HONOUR JUDGE HAMILTON

R E G I N A

- v -

MARK TAYLOR
ROBERT DAVID SANKEY
NEIL LIEVESLEY

JUDGE'S COMMENTS

APPEARANCES

For the Prosecution:
For the accused Taylor:
For the accused Sankey:
For the accused Lievesley:

MR. M. HURST
MR. BELL
THE HON. JUSTIN WIGODER
MR. G. BRANSTON

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R -v- MARK TAYLOR, ROBERT DAVID SANKEY
AND NEIL LIEVESLEY

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A JUDGE HAMILTON: Now, Mr. Hurst, without for a moment criticizing
your role in this, the question is: how did this matter come to be here? How did
these men happen to come to court? I've no doubt that they're all legally aided or,
B if they're not, there's going to be an application for their costs, which seems to be
impossible to resist.

MR. HURST: I think they are all legally aided.

C JUDGE HAMILTON: Then the public have had to spend - I don't know,
gentlemen, but we must be talking about £20,000. Even if it's £10,000 this is all
entirely wasted money and I want to know why it's wasted. Who has been
responsible for wasting this money? This case originally came to light in 2007 and
the prosecution decided they were not going to proceed with it. I have a note in, if
D I may say so, a very low-ordered skeleton argument from Mr. Wigoder saying that
the inspector in this case said that he couldn't understand why the matter was
coming back, as it were, being revived. Now, whose decision was it to revive it?

MR. HURST: The decision was taken by the Complex Case Unit of the
Crown Prosecution Service.

E JUDGE HAMILTON: Who's in charge of that? I want an explanation. This
case has not just ended. Whatever the cost, whether it's £10,000 or £20,000, public
money has been squandered in this case. A police officer, the inspector who's in
charge of the case as I understand it, thought that the matter was better resolved as
a civil matter and should never have seen the light of day.

F MR. HURST: Your Honour, that was at an earlier stage in this.

G JUDGE HAMILTON: Yes, but if his advice had been heeded we might
never be here. Mr. Schultz - it would be wrong for me to make any particular
comment about Mr. Schultz, because he's not represented, but you have clearly
come to the view that he is not a witness of truth. He is a witness who says that his
signature on a document is not his and yet your expert says it clearly is his, and
there are a number of other things about which he clearly seems to have been
economical with the truth.

H MR. HURST: Yes.

A JUDGE HAMILTON: Above all else we have these e-mails which indicate a particular dislike for one of the defendants at least and a desire to get back at him. Now, all these things should have been apparent a long time ago. These three men have been in fear of being locked up. They've no doubt spent a pretty rotten year or more worrying about what's going to happen to them and it's all for no purpose. I suspect they'll get very little comfort from the fact that they've been formally acquitted. The fact is they should never have been charged. Why were they charged?

B MR. HURST: They were charged because the prosecution were acting in good faith on the evidence of Mr. Schultz.

JUDGE HAMILTON: Why did they ever think that Mr. Schultz was a witness of truth?

C MR. HURST: Because that was the assessment of the investigating officer, having spent five days taking his original statement, that he was a witness of truth.

D JUDGE HAMILTON: As I say, I want a report as to why they came to that conclusion. In the light of what has subsequently happened it seems to me they were either taken in or had their own axe to grind, because what I can't understand is why this first statement of Mr. Schultz was never revealed, as I understand it. It was never disclosed and it was marked as not appropriate to disclose.

E MR. HURST: I understand that is the endorsement on the disclosure schedule.

JUDGE HAMILTON: How can that possibly be right? So who was the person who took that decision?

F MR. HURST: That decision was taken by Mr. Cunningham.

G JUDGE HAMILTON: That was an inappropriate decision to make and I think he must come and justify why he could possibly have said that a statement by a principal witness in a criminal prosecution should not be disclosed. How could anybody ever say that? It's indefensible. I think Mr. Cunningham should explain how it is that he comes to such a conclusion. This is not a police officer, a police constable, who doesn't know what's what. Mr. Cunningham is a senior Crown prosecuting solicitor. I just cannot fathom how he could have made such a decision.

H MR. HURST: I don't have instructions on how he made that decision. All I do know is that the schedule runs to many hundreds of pages.

JUDGE HAMILTON: But this is the most vital document.

A MR. HURST: It's not in fact. If the argument had been pursued today then that statement, whilst relevant and clearly disclosable - I do concede that - is not of such central importance as is made by the defence. The reason for this decision is the handwriting evidence principally involving Mr. Schultz.

B JUDGE HAMILTON: That completely blows your case. You see, what I'm concerned about is that - I don't know. As I say, it's not right for me to make judgments about Mr. Schultz, because he's not represented and he can't put forward his own view, but what one is concerned about is whether in fact he should be prosecuted for perverting the course of justice. What concerns me is because the case officer has made a decision, a personal decision it seems to me, to pursue this case, whether he is likely to pursue a case of attempting to pervert the course of justice, which might disclose in his acting of this case something that is not appropriate; in other words, that he might seek to cover that up. I don't know.

MR. HURST: I've seen no evidence that the officer in the case, who I've had a number of conferences with, has acted in any way other than properly.

D JUDGE HAMILTON: That the - ?

MR. HURST: That the officer in the case has acted any other way than properly. This has been a bona fide prosecution which has been torpedoed by the handwriting evidence.

E JUDGE HAMILTON: You say that, but if the handwriting expert is right and Mr. Schultz is not right - well, as I say, I think the best thing is if Mr. Cunningham --- I don't want to embarrass Mr. Cunningham. He's a senior Crown Prosecutor. He's an experienced man and a man who the court believes has the greatest integrity and the court would trust him. I think a note would be sufficient from Mr. Cunningham to explain why this statement wasn't disclosed and as to why the matter was proceeded with. A short note would suffice. He can type that and send it to me.

F MR. HURST: I'll ask him to do that. It may take longer than normal. He's on secondment in Europe at the moment.

G JUDGE HAMILTON: He can do that within twenty-eight days. That's sufficient time. Then I think, gentlemen, if there are other matters to be said about Mr. Schultz then perhaps this court is not the right place to say it. I notice there were civil proceedings and there is some suggestion - I don't know - there may be further civil proceedings, which is why I don't think it's right that I should make any comments about Mr. Schultz's honesty or otherwise, because I haven't been

asked to make a decision about it. The prosecution have simply made their views known.

A Do any of you gentlemen have any comments you would like to make, or applications?

B MR. BRANSTON: An application on behalf of Mr. Lievesley. Mr. Lievesley attends court for the fifth time, the Magistrates' Court once and four times in the Crown Court. I make an application for a defendant's costs order to cover his travel. A conservative estimate would put it at £25 per trip, £125, your Honour.

JUDGE HAMILTON: Yes.

C MR. BRANSTON: Thank you.

D MR. WIGODER: Your Honour, I have a similar application in relation to Mr. Sankey. The travel is £202.40p. More complicated, one of the prosecution witnesses, Mr. Long, was a patent attorney employed by Mr. Sankey. Mr. Long, bless him, has billed Mr. Sankey for the time spent dealing with the Derbyshire Constabulary. He has asked for an itemized bill just setting out that part. It's a global figure, but if he ---

JUDGE HAMILTON: Yes, I think the defence can have their costs, to be taxed.

E MR. WIGODER: I'm very grateful.

MR. BELL: I have the same application.

F JUDGE HAMILTON: Yes, in relation to all, and of course at the end of the day the public will have to pick up the legal aid bill, which, as I say, will be extensive, but there we are. Anyway there we are. I'll say no more about it.

G Thank you, Mr. Hurst, for your careful consideration of this matter. You've clearly taken a difficult decision, but clearly, it appears, a right one. Yes, thank you very much indeed.

H